

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Brian Weber,

Complainant,

vs.

Valencia Water Company (U342W),

Defendant.

Case 13-02-014
(Filed February 22, 2013)

Brian Weber, for Complainant.

Martin A. Mattes, Attorney at Law, for Valencia
Water Company, Defendant.

**MODIFIED PRESIDING OFFICER'S DECISION DENYING THE COMPLAINT
BY BRIAN WEBER AGAINST VALENCIA WATER COMPANY**

1. Summary

Brian Weber seeks relief pursuant to Commission Rules of Practice and Procedure Rule 4.1(b) from unreasonable rates and requests in his complaint that he be granted a waiver from a lawful tariff adopted by the Commission for Valencia Water Company. The complaint is denied. This decision does not change rates for any customer and the proceeding had no issue related to public safety. This proceeding is closed.

2. Background

On February 22, 2013, Brian Weber (Weber) filed a complaint against Valencia Water Company (Valencia) asking that he be exempt from the tariff adopted in Decision (D.) 10-12-029 known as Schedule No. 1-R, Section 3 (Tariff). The Tariff has a provision that adjusts the rates charged for water based not just on volume but also on the efficiency of water usage. After allowing for 6,500 gallons per month of indoor water usage all other water is presumed to be used for outdoor use such as gardening. Although conventional tiered rate systems adjust the price for the higher volumes of water consumed they do not normally recognize the efficiency of usage. This particular Tariff includes the calculation that adjusts for the actual square footage of irrigated property. For example, if two different customers each used the exact same amount of water but the first customer has 5,000 ft.² of irrigated garden, and the second customer has 10,000 ft.² of irrigated garden, the first customer is less efficient in his water usage and is therefore charged a higher rate for water. The purpose of this Tariff is to encourage more efficient usage of water. It also reflects that not all gardens are of equal size. The Tariff does contain an upper limit of 10,000 ft.² after which, regardless of the size of your garden, you are charged a 10,000 ft.² rate. Weber has over 39,000 ft.² of irrigated garden nearly 4 times the maximum scaler adjustment within the Tariff.

3. The Record

In addition to Weber's filed Complaint and Valencia's filed Answer to the Complaint, an evidentiary hearing was conducted by telephone with Weber and representatives of Valencia. This was done with the mutual consent of both parties. During the course of that hearing Weber and Valencia were questioned directly by the judge and allowed to make whatever statements or arguments

they deemed appropriate. After reviewing this material the judge determined that no further written argument was required from either party. The record for this proceeding therefore consists of the Complaint, the Answer, and the hearing transcript.

4. The Burden of Proof

It is a long-standing requirement of public utility regulation that the lawful tariff provisions must be followed. *Pinney & Boyle Mfg. Co. v Atchison, T. & S.F. Ry.* (1914) 4 Cal RRC 404. A utility is under the duty to strictly adhere to its lawfully published tariffs. *Temescal Water Co. v West Riverside Canal Co.* (1935) 39 Cal RRC 398. Tariffed provisions and rates must be inflexibly enforced to maintain equity and equality for all customers with no preferential treatment afforded to some. *Empire W. v Southern Cal. Gas. Co.* (1974) 38 Cal App 3d 38, 112 Cal Rptr 925. Furthermore, the published tariff becomes established by law and can only be varied by law, not by an act of the parties. *Johnson v. Pacific Tel. & Tel. Co.* (1969) 69 Cal PUC 290.

For Weber to prevail in this case, he must establish by a preponderance of evidence that either the Tariff is not lawful or that Valencia is not correctly applying the Tariff to his service.

5. The Complaint

Weber argues that the 10,000 ft.² lot limit is unfair to him (and approximately 80 other customers) who exceed the efficiency adjustment factor limit of 10,000 ft.² of irrigated garden. Weber proposes that he should be “grandfathered” into a variation of the Tariff that would use actual square footage because he has been in his current home for over 30 years. He points out that his actual usage is highly efficient under the formula if you use his actual

square footage and not the formula limit. Weber additionally argues that he is over the age of 70 years and lives on a fixed income.

6. The Defense

Valencia offered three defenses in its Answer. Two of these defenses are frivolous and are rejected out of hand. The first is that Weber's complaint is not valid because for an individual to file a valid complaint such as this one it must, for example, bear the signature of the mayor of the city in which the customer lives. (This is in the absence of meeting various other alternative means of qualifying to file a complaint.) In fact, attached to Weber's complaint was a letter signed by the Mayor of the City of Santa Clarita that clearly and deliberately acknowledged that as Mayor, and in an official capacity, the Mayor supported Weber's complaint. If we were to take Valencia's defense at face value the Commission would be unable to accept any settlement (or any other joint pleading) by multiple parties when they attach multiple separate pages with individual signatures, or a separate motion to join the settlement, from the parties rather than having a single piece of paper signed by every party. It would be an injustice to even momentarily consider this defense.

Valencia also argued that in a pending general rate case it was proposing to use in the future a different tariff that would not charge Weber the rate he is currently paying. This defense, too, is indefensible. Either the Tariff is fair now or it is not. Correcting the alleged unfair Tariff eventually would not be fair to Weber now.

Valencia raises a third defense which is both valid and upon which we rely on denying Weber's complaint. Quite simply, that defense is the Tariff being charged is a lawful Tariff authorized by this Commission which means if Valencia is correctly applying and calculating rates under the Tariff when

charging Weber for the water he uses now then Valencia is in compliance with the Commission's decision. (Answer at 3.)

Although we are sympathetic to Weber's position and his age we find that these do not constitute a valid cause to alter the Tariff. The Tariff was adopted by the Commission in a fully litigated proceeding where all parties had notice, the public was broadly represented by the then Division of Ratepayer Advocates, and every individual customer would have been notified pursuant to our rules applicable to general rate cases. The Tariff emerged out of that proceeding. The Tariff appears to be uniformly applied to all customers and Valencia does not appear to be discriminating against Weber in any manner. The adopted mechanism deliberately allows for a large variance in pricing for irrigated gardening and provides a rate discount commensurate with both the water usage and the efficiency of that water usage. There's nothing unreasonable about this mechanism having a cap. There is nothing unreasonable about how Valencia has applied the Tariff to Weber. At some point an individual's personal choices of lifestyle, in this case having 39,000 ft.² of irrigated garden, is a matter of personal responsibility and that individual must bear the full reasonable cost of that choice even as utility rates change over time. We therefore deny Weber's complaint.

7. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Douglas Long is the assigned ALJ and Presiding Officer in this proceeding.

8. Procedural History

The Complaint was filed on February 22, 2013, and Valencia was ordered to Answer within 30 days on March 12, 2013. The Order to Answer designated the Complaint as Adjudicatory. Valencia timely filed an Answer to the Complaint on April 9, 2013, and included additional information as requested by

the judge by an electronic ruling dated March 12, 2013. An evidentiary hearing was conducted telephonically on October 14, 2013. There was no scoping memo.

9. Appeal and Review of Presiding Officer's Decision

The Presiding Officer's Decision was mailed to the parties in accordance with Section 311 and Rule 14.2 of the Commission's Rules of Practice and Procedure. Appeal and review of the Presiding Officer's Decision was permitted pursuant to Rule 14.4 of the Commission's Rules of Practice and Procedure.

On February 14, 2014, Weber filed a timely appeal of the Presiding Officer's Decision, dated January 27, 2014. Valencia did not file a response.¹ The Commission hereby adopts the Presiding Officer's Decision; however it is reasonable to respond to the specifics of Weber's appeal.

Weber argues in his appeal that he named the Commission as defendant and that "someone" changed the defendant to Valencia. The only valid defendant in a Complaint is the serving utility, not the Commission. As a necessary step to entertain Weber's Complaint the Commission staff ministerially identified Valencia, the service provider, as the Defendant. We affirm this action by staff.

The second objection both restates Weber's complaint, that there should be no square footage limitation of the water usage efficiency calculation and misstates the findings in the Presiding Officer's Decision. The decision found that a limitation was reasonably adopted in Valencia's last rate design and the decision correctly illustrated the mechanics of the efficiency factor: a given

¹ We note that Valencia is no longer a public utility subject to our jurisdiction. See D.14-02-041 in Application 13-01-003, currently reopened pending an application for rehearing.

amount of water is used more efficiently in a larger area and therefore is priced at a discount compared to the same usage for a smaller area. We affirm these findings of the Presiding Officer's Decision.

The third objection repeats the Complainant's assertion that the Tariff is discriminatory and therefore unlawful because it prices water usage over the square footage limitation at a higher cost. This is not correct. In fact the Commission is allowed to "discriminate,"² in that it may lawfully make a reasonable distinction between two choices. It is only unlawful to unfairly or arbitrarily discriminate, for example, to charge citizens more than non-citizens, or old customers less than new customers. Here the Commission had reasonably adopted a tariff that set a square footage limit on pricing water at a discount. We affirm this finding of the Presiding Officer's Decision.

Finally, Weber argues in the appeal that the Presiding Officer's Decision had other factual errors and was otherwise unfair to Weber. We reviewed Weber's complaint, which is the Tariff is unfair or otherwise not legally adopted. The decision accurately and fairly describes the Tariff and reasonably denies the complaint. We deny Weber's appeal and we made no changes to the decision, including its discussion, findings, or order.

² Discrimination: The action of perceiving, noting, or making a distinction between things. Oxford English Dictionary Online
<http://www.oed.com/view/Entry/54060?redirectedFrom=discrimination#eid>.

Findings of Fact

1. Weber is a customer of Valencia who irrigates 39,000 ft.² of garden space.
2. The tariff adopted in D.10-12-029 known as Schedule No. 1-R, Section 3 is applicable to Weber. The Tariff has an efficiency adjustment with a limit on the adjustment of 10,000 ft.²
3. Valencia has applied the tariff correctly when billing Weber.

Conclusions of Law

1. Valencia must strictly adhere to its lawfully published tariffs.
2. Valencia has applied the Tariff correctly in a fair manner without discrimination.
3. Schedule No. 1-R, Section 3 was properly adopted by the Commission and it is reasonable for Valencia charge Weber under this tariff.
4. The Complaint should be denied and this proceeding closed.

O R D E R

IT IS ORDERED that:

1. The Complaint of Brian Weber is denied.
2. Case 13-02-014 is closed.

This order is effective today.

Dated _____, at Los Angeles, California.